

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

<b>WILLIAM STUART STAPP AND WIFE</b>	§
<b>ELIZABETH STAPP,</b>	§
<b>Plaintiffs,</b>	§
 <b>VS.</b>	§
 <b>BANK OF AMERICA, N.A., BAC HOME</b>	§
<b>LOANSERVICING, L.P., FEDERAL</b>	§
<b>NATIONAL MORTGAGE ASSOCIATION</b>	§
<b>AND BARRETT DAFFIN FRAPPIER</b>	§
<b>TURNER&amp; ENGEL, L.L.P.,</b>	§
 <b>Defendants.</b>	§

**Case No. 4:11CV203**

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On February 28, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants Bank of America, N.A., BAC Home Loans Servicing, LP, and Federal National Mortgage Association's Motion for Summary Judgment (Dkt. 31) be GRANTED as to (1) Plaintiffs' breach of contract claim based on a breach of the mortgage documents allegedly without adequate notice and an opportunity to cure, (2) Plaintiffs' suit to quiet title and trespass to try title claims, and (3) Plaintiffs' TDCA claims under Section 392.304 (a)(19) and DENIED as to (1) Plaintiffs' negligent misrepresentation claim against Bank of America and (2) Plaintiffs' TDCA claims under Sections 392.304(a)(8).

The court has made a *de novo* review of the objections raised by Plaintiffs and Defendants (*see* Dkts. 77 & 80), as well as Defendants' response to Plaintiffs' objections (*see* Dkt. 78), and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the

objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendants Bank of America, N.A., BAC Home Loans Servicing, LP, and Federal National Mortgage Association's Motion for Summary Judgment (Dkt. 31) is GRANTED as to (1) Plaintiffs' breach of contract claim based on a breach of the mortgage documents allegedly without adequate notice and an opportunity to cure, (2) Plaintiffs' suit to quiet title and trespass to try title claims, and (3) Plaintiffs' TDCA claims under Section 392.304 (a)(19), and Plaintiffs' shall take nothing by those claims. Further, Defendants' Motion for Summary Judgment is DENIED as to (1) Plaintiffs' negligent misrepresentation claim against Bank of America and (2) Plaintiffs' TDCA claims under Sections 392.304(a)(8), and those claims shall proceed to trial.

**IT IS SO ORDERED.**

**SIGNED this the 27th day of March, 2013.**



---

RICHARD A. SCELL  
UNITED STATES DISTRICT JUDGE